

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION IX

IN THE MATTER OF:

Air BP, an operating division of
BP Exploration & Oil Inc.
Sparks Solvent/Fuel Site
Sparks, Nevada

Proceeding under Section 122(g)(4)
of the Comprehensive Environmental
Response, Compensation, and
Liability Act of 1980, as amended,
42 U.S.C. §9622(g)(4)

U.S. EPA Docket No. 95-09

ADMINISTRATIVE ORDER
ON CONSENT
FOR A
DE MINIMIS SETTLEMENT

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I. JURISDICTION

A. This Administrative Order on Consent ("Consent Order") is issued pursuant to the authority vested in the President of the United States by Section 122(g)(4) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986 ("CERCLA"), Pub. L. No. 99-499, 42 U.S.C. § 9622(g)(4), in order to settle specified EPA claims under Sections 106(a) or 107(a) of CERCLA, 42 U.S.C. §§ 9606(a) or 9607(a). The authority vested in the President has been delegated to the Administrator of the United States Environmental Protection Agency ("EPA") by Executive Order 12580, 52 Fed. Reg. 2923 (Jan. 29, 1987), further delegated to the Regional Administrators of EPA by EPA Delegation No. 14-14-E (issued Sept. 13, 1987, amended by memorandum June 17, 1988), and further delegated to the Hazardous Waste Management Division Director by Regional Order R-290.45 (October 26, 1988).

B. This Administrative Order on Consent is issued to Air BP, an operating division of BP Exploration & Oil Inc. ("Respondent"). Respondent agrees to undertake all actions required by the terms and conditions of this Consent Order. Respondent further consents to and will not contest EPA's jurisdiction to issue this Consent Order or to implement or enforce its terms.

II. DEFINITIONS

A. Unless otherwise expressly provided herein, terms used in this Consent Order that are defined in CERCLA or in regulations promulgated under CERCLA shall have the meaning assigned to them in the statute or regulations. Whenever the terms listed below are used in this Order, including the attached appendices, the following definitions shall apply:

1. "CERCLA" shall mean the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. §§ 9601, et seq.

2. "Administrative Order on Consent" shall mean this "Consent Order" or "Order" and all appendices attached hereto. In the event of conflict between this Order and any appendix, the Order shall control.

3. "EPA" shall mean the United States Environmental Protection Agency and any successor departments or agencies.

4. "Future Response Costs" shall mean those costs incurred by EPA in connection with the Site after May 23, 1994, including but not limited to direct and indirect costs that EPA incurs in implementing and overseeing the remedy, or in enforcing

this Consent Order.

5. "Parties" shall mean "EPA" and the "Respondent."

6. "Past Response Costs" shall mean those costs, including but not limited to, direct and indirect costs and interest, incurred by EPA prior to May 23, 1994, in connection with the Site.

7. "Respondent" shall mean Air BP, an operating division of BP Exploration & Oil Inc.

8. "Section" shall mean a portion of this Consent Order identified by a Roman numeral.

9. "Site" shall mean the Sparks Solvent/Fuel Site located in southern Sparks, Nevada, in the Truckee River Groundwater Basin, approximately one mile from the Truckee River. The Site includes the Southern Pacific Rail Yard ("Rail Yard"), the Santa Fe Pacific Pipeline Limited Partnership Reno Terminal Tank Farm ("Tank Farm"), and all areas of surface and subsurface contamination at or emanating from the Site.

10. "United States" shall mean the United States of America, its agencies, departments, and instrumentalities.

III. STATEMENT OF FACTS

A. The Site is located in southern Sparks, Nevada, in the Truckee River Groundwater Basin, approximately one mile from the Truckee River. The Site includes the Rail Yard, the Tank Farm, and all areas of surface and subsurface contamination at or emanating from the Site.

B. The Site includes soils contaminated with hydrocarbons, chlorinated solvents, fuel additives and asbestos. The groundwater beneath the Site is also contaminated with chlorinated solvents and petroleum.

C. Four chlorinated solvents have been released or threatened to be released into the environment. They are tetrachloroethylene (PCE), trichloroethene (TCE), trichlorofluoromethane (Freon 11) and methylene chloride. These contaminants were detected in concentrations exceeding the federal drinking water standards or Maximum Contaminant Levels (MCL) established for these substances. Drinking water that meets the MCL is considered to be protective of human health and the environment. The four chlorinated solvents detected at the Site are hazardous substances within the definition of Section 101(14) of CERCLA, 42 U.S.C. § 9601(14).

D. As a result of the release or threatened release of hazardous substances into the environment, EPA has undertaken

response action(s) at the Site and has directed others to undertake additional response actions.

E. The eleven parties named below were issued orders pursuant to Section 106 of CERCLA, 42 U.S.C. § 9606, pertaining to the Site, on August 22, 1991, and June 11, 1993, EPA Order Nos. 91-22 and 93-17, respectively:

1. Berry-Hinkley Terminal, Inc. of Sparks, Nevada;
2. BP Oil Company of Cleveland, Ohio;
3. Chevron U.S.A. Inc. of San Francisco, Ca.;
4. Golden Gate Petroleum Co. of Orinda Ca.;
5. Santa Fe Pacific Pipelines Inc. of Los Angeles, Ca.;
6. Shell Oil Company of Houston, Texas;
7. Southern Pacific Transportation Co. of San Francisco, Ca.;
8. Texaco Refining and Marketing Inc. of Houston, Texas;
9. Time Oil Co. of Seattle Wa.;
10. Unocal Corporation of Los Angeles, Ca., and
11. Helms Construction

F. In performing response action(s) and in overseeing the response actions of the above named parties, EPA has incurred and will continue to incur response costs at or in connection with the Site.

IV. RESPONDENT'S INVOLVEMENT AT THE SITE

A. Respondent currently owns an above ground storage tank designated R-35 at the Site. Respondent bought the tank in December, 1989, from Golden Gate Petroleum Company. A "Bill of Sale" dated December 13, 1989, describes the tank, valves, pumps, pump motor, filter vessel, rack meter, all associated piping from the tank to load rack, and all associated electrical controls and conductors.

B. Respondent also acquired the "Lease Agreement" dated September 15, 1977, between Southern Pacific Pipelines, Inc. and Golden Gate Company. The Lease affects 0.14 acres of land owned by Southern Pacific underlying Tank R-35 and related facilities. The lease was transferred to BP North America Petroleum Inc. from

Golden Gate Petroleum by a "Consent to and Assumption of Assignment" document.

C. On December 21, 1989, Golden Gate Petroleum Company executed a "Consent to an Assumption to Assignment" transferring its Operating Agreement with Southern Pacific Pipelines to BP North America Petroleum Inc.

D. Prior to purchasing the tank, and twice subsequent to the purchase, Respondent has tested the tank. Based on information currently available to EPA, these tests appear to indicate that the tank bottom is in good working condition and leakage from the tank bottom is unlikely.

E. Respondent has also tested the piping associated with the tank on two occasions. Based on information currently available to EPA, both pipe tests appear to indicate that the piping associated with the tank have no notable problems.

F. On February 1, 1991, the Nevada Division of Environmental Protection filed its "Amended Complaint" in Case No CV91-546, Nevada Division of Environmental Protection vs. Santa Fe Pacific Pipeline Inc., Southern Pacific Transportation Company, Shell Oil Company, Berry-Hinkley Terminal, Inc., Chevron U.S.A. Inc., Texaco Refining and Marketing, Inc., Air BP, a division of BP Oil, Unocal Corporation, and Golden Gate Petroleum Company, ("State Action") alleging violations of the Nevada Water Pollution Control Law, the Nevada Storage Tank Law, and the Nevada Hazardous Waste Disposal Law. The Amended Complaint named ten defendants including Respondent and Golden Gate Petroleum Company.

G. On May 20, 1993, the Nevada Divisions of Environmental Protection and Respondent entered into a STIPULATION AND ORDER TO DISMISS DEFENDANT AIR BP WITHOUT PREJUDICE in Case No. CV91-546. The STIPULATION AND ORDER provide:

1. Subsurface contamination was discovered in 1987 in the vicinity of the Sparks Tank Farm and Southern Pacific Railroad Yard in Sparks, Nevada.

2. On December 21, 1989 defendant Air BP acquired Tank R-35 in the Sparks Tank Farm from defendant Golden Gate Petroleum. Defendant Air BP was also assigned rights from Golden Gate Petroleum relating to Tank R-35: a "Lease Agreement" dated September 15, 1977 affecting approximately 0.14 acres of land and an "Operating Agreement" originally dated July 3, 1973, as amended. Both agreements were with Southern Pacific Pipe Lines, Inc., the name used by defendant Santa Fe Pacific Pipelines, Inc. prior to 1980.

3. Defendant Air BP has performed extensive testing on Tank R-35 and related piping under its control. The resulting

reports were submitted to DEP for review.

4. There is no evidence at this time that defendant Air BP contributed to the nearby petroleum plume and extensive contamination discovered in 1987 in the vicinity of the Sparks Tank Farm.

5. Site investigation and characterization is continuing.

6. The Nevada Division of Environmental Protection's action against Air BP should be dismissed without prejudice.

H. On June 9, 1993, the City of Sparks and the Washoe County Health District entered into stipulations with Respondent entitled "STIPULATIONS AND ORDER TO DISMISS DEFENDANT AIR BP WITHOUT PREJUDICE."

I. On September 16, 1993, after the opportunity for comment by the other defendants in the State Action, the State Court entered its ORDER DISMISSING AIR BP WITHOUT PREJUDICE SUBJECT TO CERTAIN PROCEDURAL REQUIREMENTS.

V. DETERMINATIONS

Based upon the STATEMENT OF FACTS set forth above and RESPONDENT'S INVOLVEMENT AT THE SITE set forth above, EPA has determined that:

A. The Southern Pacific Rail Yard; the Santa Fe Pacific Pipeline Limited Partnership Reno Terminal Tank Farm; the eight adjacent fuel delivery and storage operations; Respondent's tank at the Sparks Solvent/Fuel Site; and the areas of soil and groundwater contamination are a "facility" as defined by Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

B. Respondent is a "person" as that term is defined in Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).

C. Respondent is a potentially responsible party within the meaning of Sections 107(a) and 122(g)(1) of CERCLA, 42 U.S.C. §§ 9607(a) and 9622(g).

D. There has been an actual or a threatened "release" of a hazardous substance from the Site as that term is defined in Section 101(22) of CERCLA, 42 U.S.C. § 9601(22).

E. Prompt settlement with Respondent is practicable and in the public interest within the meaning of Section 112(g)(1) of CERCLA, 42 U.S.C. § 9622(g)(1).

F. This Consent Order involves only a minor portion of the response costs at the Site pursuant to Section 122 (g)(1) of

CERCLA, 42 U.S.C. § 9622(g)(1).

G. The amount of hazardous substances contributed to the Site by Respondent and the toxic or other hazardous effects of the hazardous substances contributed, if any, to the Site by Respondent are minimal in comparison to other hazardous substances at the Site pursuant to Section 122(g)(1)(A) or CERCLA, 42 U.S.C. § 9622(g)(1)(A).

VI. ORDER

Based upon the STATEMENT OF FACTS set forth above and RESPONDENT'S INVOLVEMENT AT THE SITE set forth above, and in consideration of the promises and covenants set forth herein, it is hereby AGREED AND ORDERED as follows:

VII. ACCESS

A. Respondent shall provide U.S. EPA and/or its designated representative with continued access to its portion of the Site for the purposes of monitoring the terms of this Consent Order and performing response actions at the Site. Nothing in this Consent Order shall be deemed a limit upon EPA's authority under federal law to gain access to the Site.

B. Respondent shall provide the ten additional entities identified as Respondents for this Site in EPA's CERCLA Orders Nos. 91-22 and 93-17 with continued access to its portion of the Site for the purpose of performing response actions at the Site.

C. Nothing in this Consent Order shall in any manner restrict or limit the nature or scope of response action which may be taken by EPA in fulfilling its responsibilities at the Site. Respondent recognizes that the implementation of response actions at the Site may interfere with Respondent's use of its portion of the Site. Respondent agrees to cooperate with EPA in the implementation of response actions at the Site and further agrees not to interfere with such response actions. Respondent further agrees that it will not seek reimbursement from EPA or the United States for any such interference.

VIII. DUE CARE

Nothing in this Consent Order shall be construed to relieve Respondent of its duty to exercise due care with respect to the hazardous substances at its portion of the Site or its duty to comply with all applicable laws and regulations.

IX. PAYMENT

A. Respondent shall pay the amount of \$25,000 TWENTY-FIVE THOUSAND DOLLARS in accordance with the provisions of this Section. The total amount to be paid by Respondent includes a

payment for Respondent's share of: a) past response costs incurred by EPA at or in connection with the Site; b) future response costs of the response action which are currently estimated by EPA to be \$160,000; and c) a premium to cover any costs which may be incurred by EPA if EPA determines that the response action undertaken by the Respondents to the CERCLA Orders for this Site is not protective of human health and the environment or the failure of the Respondents to the CERCLA Orders for this Site to complete necessary response actions. Respondent's payment for these three cost categories is set forth as follows:

Past Oversight Costs.....\$5,909.71

Future Oversight Costs.....\$1,600.00

Premium.....\$17,490.29

B. Within 30 days of the effective date of this Order, Respondent shall pay the amount of \$25,000 TWENTY-FIVE THOUSAND DOLLARS to the Sparks Solvent/Fuel Site Account #9TW6. Such payment shall be made by certified or cashier's check made payable to Sparks Solvent/Fuel Site Account #9TW6. Such check shall reference the site name, the name and address of the Respondent, and the EPA docket number for this action, and shall be sent to:

U.S. EPA - Region IX
Attn: Superfund Accounting
P.O. Box 360863M
Pittsburgh, PA 15251

C. Respondent shall simultaneously send a copy of its check to:

Mark Klaiman
Assistant Regional Counsel
Office Of Regional Counsel (RC-3-1)
U.S. Environmental Protection Agency, Region IX
75 Hawthorne Street
San Francisco, California 94105

X. CIVIL PENALTIES

In addition to any other remedies or sanctions available to EPA, if Respondent fails or refuses to comply with any term or condition of this Consent Order, Respondent shall be subject to a civil penalty of up to \$25,000 per day for each failure or refusal pursuant to Sections 109 and 122(1) of CERCLA, 42 U.S.C. §§ 9609 and 9622(1).

XI. CERTIFICATION OF RESPONDENT

A. Respondent certifies that it contributed no more than one percent of the total hazardous substances released or threatened to be released at the Site, and that it contributed waste of minimal toxic and hazardous effect in comparison to the other waste at the Site, if any.

B. Respondent further certifies that it has conducted a thorough and comprehensive, good faith search for documents and has fully and accurately disclosed to EPA all information currently in its possession, or in the possession of its officers, directors, employees, contractors or agents, which in any way relates to the ownership, operation, generation, treatment, transportation, storage, or disposal of hazardous substances at or in connection with the Site.

C. Respondent further certifies that it has not altered, mutilated, discarded, destroyed or otherwise disposed of any records, documents, or other information relating to its potential liability regarding the Site since notification of its potential liability regarding the Site and that it has fully complied with any and all EPA Information Request regarding the Site, pursuant to Section 104(e) of CERCLA, 42 U.S.C. § 9604(e). Provision of false, fictitious, or fraudulent statements or representations to the United States may subject a Respondent to criminal penalties under 18 U.S.C. § 1001.

XII. COVENANT NOT TO SUE BY EPA

In consideration of the payments that will be made by Respondent under the terms of this Consent Order, and except as specifically provided in Section XIV (RESERVATION OF RIGHTS) of this Consent Order, EPA covenants not to sue or take administrative action against the Respondent pursuant to Sections 106(a) or 107(a) of CERCLA, 42 U.S.C. §§ 9606(a) or 9607(a), and Section 7003 of the Resource Conservation and Recovery Act, as amended, 42 U.S.C. § 6973, relating to the Site. This covenant not to sue shall take effect with respect to Respondent upon the receipt by EPA of the payment from Respondent required by Section IX (PAYMENT) of this Consent Order. This covenant not to sue is conditioned upon the complete and satisfactory performance by Respondent of its obligations under this Consent Order. This covenant not to sue extends only to the Respondent, its successors, assigns and affiliates, and its and their directors, officers and employees, and does not extend to any other person. For the purposes of this Consent Order, the term "affiliates" shall mean any company which is, directly or indirectly, controlled by, under common control with, or controlling Respondent, as the case may be.

XIII. COVENANT NOT TO SUE BY RESPONDENT

A. Respondent covenants not to sue and agree not to assert any claims or causes of action against the United States, its agencies, officers, employees or representatives with respect to the Site or this Consent Order, including, but not limited to, any direct or indirect claim under Sections 106(b)(2), 107, 111, 112, or 113 of CERCLA, 42 U.S.C. §§ 9606(b)(2), 9607, 9611, 9612, or 9613, or any other provision of law, or any claims arising out of response activities at the Site.

B. Respondent also agrees not to make any claims for reimbursement from the Hazardous Substance Superfund (established pursuant to the Internal Revenue Code, 26 U.S.C. § 9507). Nothing in this Consent Order shall be deemed to constitute preauthorization of a claim within the meaning of Sections 111 or 112 of CERCLA, 42 U.S.C. §§ 9611 and 9612, or 40 C.F.R. 300.700(d).

C. Nothing in this section shall be construed as a waiver of Respondent's rights, under applicable statutes or common law, to bring an action for contribution or reimbursement against other Respondents and Potentially Responsible Parties at the Site.

XIV. RESERVATIONS OF RIGHTS

A. The Covenant Not to Sue by EPA set forth in Section XII (COVENANT NOT TO SUE) of this Consent Order does not pertain to any matters other than those expressly specified therein. The United States, including EPA, reserves, and this Consent Order is without prejudice to, all rights against Respondents with respect to all other matters, including but not limited to the following:

1. claims based on a failure to make the payments required by Section IX (PAYMENT) of this Consent Order;
2. criminal liability;
3. liability for damages for injury to, destruction of, or loss of natural resources;
4. liability for any future release, threatened release, or disposal of hazardous substances at the Site;
5. liability arising from the past, present, or future disposal, release or threat of release of hazardous substances outside of the Site.

B. Nothing in this Consent Order constitutes a covenant not to sue or to take action or otherwise limits the ability of the United States, including EPA, to seek or obtain further relief from Respondent if information not currently known to the

EPA is discovered which indicates that Respondent contributed hazardous substances to the Site in such greater amount or of such greater toxic or other hazardous effects that the Respondent no longer qualifies as a de minimis party at the Site because the Respondent contributed greater than one percent of the waste at the Site or contributed wastes which are significantly more toxic or are of significantly greater hazardous effect than other hazardous substances at the Site.

XV. EFFECT OF SETTLEMENT; CONTRIBUTION PROTECTION

A. Nothing in this Consent Order shall be construed to create any rights in, or grant any cause of action to, any person not a party to this Consent Order. The preceding sentence shall not be construed to waive or nullify any rights that any person not a signatory to this Consent Order may have under applicable law. The United States, including EPA, and the Respondent each reserve any and all rights (including, but not limited to, any right to contribution), defenses, claims, demands, and causes of action which each party may have with respect to any matter, transaction, or occurrence relating in any way to the Site against any person not a party hereto.

B. EPA and Respondent agree that the actions undertaken by Respondent in accordance with this Consent Order do not constitute an admission of any liability for any purpose by Respondent.

C. Subject to the reservation of rights set forth above, the Parties agree that by entering into and carrying out the terms of this Consent Order, Respondent will have resolved its liability to the United States relating to the site pursuant to Sections 113(f)(2) and 122(g)(5) of CERCLA, 42 U.S.C. §§ 9613(f)(2) and 9622(g)(5). With regard to claims for contribution against the Respondent for matters addressed by this Consent Order, the Parties hereto agree that Respondent is entitled, as of the effective date of this Consent Order, to such protection from contribution actions or claims as is provided by Sections 113(f)(2) and 122(g)(5) of CERCLA, 42 U.S.C. Sections §§ 9613(f)(2) and 9622(g)(5).

XVI. PARTIES BOUND

This Consent Order shall apply to and be binding upon EPA and Respondent and each of their respective successors, assigns, and affiliates. Each signatory to this Consent Order represents that he or she is fully authorized to enter into the terms and conditions of this Consent Order and to legally bind the party represented by him or her. Any change in ownership or corporate status of Respondent, including, but not limited to, any transfer of assets or real or personal property, shall in no way alter Respondent's responsibilities under this Consent Order.

XVII. PUBLIC COMMENT

This Consent Order shall be subject to a thirty-day public comment period pursuant to Section 122(i) of CERCLA, 42 U.S.C. § 9622(i). In accordance with Section 122(i)(3) of CERCLA, 42 U.S.C. § 9622(i)(3), EPA may withdraw or modify consent to this Consent Order if comments received disclose facts or considerations which indicate that this Consent Order is inappropriate, improper, or inadequate.

XVIII. ATTORNEY GENERAL APPROVAL

Before issuing this Consent Order, the EPA must obtain the written approval of the U.S. Attorney General or her designee of the settlement embodied in this Consent Order in accordance with Section 122(g)(4) of CERCLA. This Consent Order will not become effective unless and until such approval is obtained.

XIX. EFFECTIVE DATE

The effective date of this Consent Order shall be the date upon which EPA issues written notice to Respondent that the public comment period pursuant to Section XVII of this Consent Order has closed and that comments received, if any, do not require modification of, or EPA withdrawal from, this Consent Order.

XX. AMENDMENTS

This Consent Order may be amended by mutual agreement of EPA and the Respondent. Any amendment to this Consent Order shall be in writing, signed by EPA and the Respondent, and shall have as the effective date the date upon which EPA issues written notice to the Respondent.

IT IS SO AGREED AND ORDERED:

Air BP, an operating division of BP Exploration & Oil Inc.

By: 

Kevin M. Carr
Regional Manager, Air BP USA
Division of BP Exploration & Oil Inc.

9 January 1995
Date

U.S. Environmental Protection Agency

By: 

Jeff Zelikson
Director, Hazardous Waste Management Division
Region IX

1-18-95

Date